

Warranties: Not Just What You Say, Implied

Warranties Are Part of Every Sale

Most dealers are well versed in the terms of express warranties that attach to product sales. These warranties are usually extended by a manufacturer and given to a customer with a new equipment purchase. There are also warranties that are implied by law that can arise in the sale of equipment, both new and used. This article looks at how implied warranties are created and discusses some tips as to how they can be limited. **Product Description** Perhaps the most basic warranty is that the customer is getting the equipment that he or she is supposed to be getting. In other words, the product description on a bill of sale is accurate. For this purpose, the more detailed the description, the better. Identifying the make, model and serial number is a good starting point. If the equipment is used, however, more information is prudent. A product description implies that the equipment is what it says it is and, more importantly, can fulfill the "ordinary purpose" for which it was intended. This is the UCC implied warranty of merchantability. For used equipment, something more than make and model should be included. For instance, the number of hours could limit the implied warranty – equipment with 5,000 hours on the meter might be expected to fulfill a different ordinary purpose than one with 100 hours. Likewise, a product description might describe the status of equipment. If equipment is being sold for rebuilding or to use for spare parts, that should be noted in the product description. After all, including "for use as spare parts" removes any doubt as to whether the equipment can function. It changes the "ordinary purpose" significantly. **Fitness For A Particular Purpose** Another common UCC implied warranty is the warranty of fitness for a particular purpose. The scenario is not uncommon. A customer comes in and says he or she is looking for a piece of equipment to perform a specific function, like a used tractor to bale hay using a specific baler that the customer already has. The customer asks whether you can match these needs with anything on the lot. Answering "I have just this" triggers the warranty of fitness for a particular purpose: the dealer warrants that the equipment will fulfill that purpose and can be held liable for damages if the equipment fails. A simple way to limit the risk of this warranty is to have the customer specify what he or she is looking for. In this example, ask for a horsepower range, four or two wheel drive, new or used, age range or hour range, specific brand, etc. Generally, the more details specified by the customer, the less likely that this implied warranty applies. Finally, let customers inspect and test the equipment. A thorough inspection can go a long way toward establishing that the customer decided suitability of the equipment. Couple an inspection/demonstration with a statement like "Customer acknowledges that he or she is relying upon his or her own judgment to determine the suitability of the equipment selected." That will go a long way toward eliminating this implied warranty. **Warranty Of Title** Customers expect a dealer to provide good title to equipment that a customer purchases and the UCC includes an implied warranty of title. Dealers, however, do not always have good title and this must be disclosed. For instance, some dealers that are unwilling to accept trade-in equipment are willing to sell their customers' equipment as a favor. Because the dealer lacks title, the dealer cannot convey title. The lack of title should be disclosed and the sale completed in the name of the customer. **Disclaimers** Dealers can try to manage the risk of implied warranties through the use of disclaimers, but they are not always effective. Terms such as "as is" or "with all faults" can be used to disclaim implied warranties. There are a couple of important caveats: (1) the equipment sold must still match the description; and (2) some states prohibit disclaiming warranties in consumer transactions (including transactions with family farmers). Consult your local attorney to determine whether consumer protection laws apply. **Conclusion** Warranties are extended in sales transactions even when there is no written warranty provided. The law implies warranties for the benefit of the purchaser and dealers must be aware of the warranties that are extended and ways to limit their application. Describe the equipment being sold accurately and make the customer provide detailed specifications to limit the risks

from implied warranty claims.